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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/866,951	05/29/2001	Richard C. Graham	10779-003-999	4967

20583 7590 06/03/2003

PENNIE AND EDMONDS
1155 AVENUE OF THE AMERICAS
NEW YORK, NY 100362711

EXAMINER

GOLBA, TARA M

ART UNIT

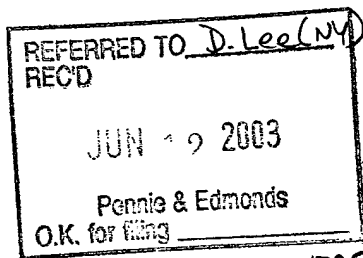
PAPER NUMBER

3644

DATE MAILED: 06/03/2003

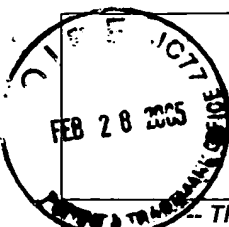
Please find below and/or attached an Office communication concerning this application or proceeding.

Amendment due 9/3/03
Appeal due 9/3/03 @



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Office Action Summary

Application No. 09/866,951		Applicant(s) GRAHAM, RICHARD C.	
Examiner Tara M. Golba		Art Unit 3644	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 February 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-38 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 12-22 is/are allowed.
- 6) ☒ Claim(s) 1-11 and 23-38 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

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Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☒ The proposed drawing correction filed on 8/5/02 is: a) ☒ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 2/19/03 have been fully considered but they are not persuasive.

Applicant argues that the Glebe reference fails to disclose the claimed feature of a first plane of the gun rest being disposed at a non-perpendicular angle to the longitudinal axis of the shaft. Applicant also argues that it would not have been obvious to angle the gun rest of Glebe, and that Glebe even teaches away from a non-perpendicular angle because the Glebe support surface is intended to be perpendicular to the shaft. However, the examiner maintains that the amendments to claims 1, 23, and 31 do not overcome the rejections based on Glebe.

Regarding claim 1, the following claim language has been added: a first end section "lying generally in a first plane," "an elongated shaft having a longitudinal axis," and "the first end section is disposed in relation to the shaft such that the plane of the first end section is non-perpendicular to the longitudinal axis of the shaft." It is maintained that Glebe discloses all of these features. Glebe shows a first end section in a first plane (figure 2: surface 14 in a first plane), an elongated shaft with a longitudinal axis (element 10), and first end section (element 14) disposed in relation to the shaft such that the plane of the first end section is non-perpendicular to the longitudinal axis of the shaft (figure 3, where the rest is shown in both perpendicular and non-perpendicular positions with respect to the shaft). Glebe does therefore disclose the limitations of claim 1 as amended.

Regarding claim 23, the amendment adds the recitation that "an elongated shaft with a longitudinal axis may be inserted through the opening and a non-perpendicular angle is formed

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between the first plane of the first end section and the longitudinal axis of the shaft.” Again, this is shown in Figure 3 of Glebe.

Regarding claim 31, the amendment adds the limitations discussed above as well as the claim that a firearm may be mounted atop the intermediate plate section such that “the forearm [of the firearm] rests upon both the first plate section and the second plate section.” In the Glebe reference, a firearm could be placed atop the interior angle of the gun rest shown in Figure 3 so that the forearm of the firearm rests upon both the first and second plate sections of the rest. The amendment to claim 31 therefore fails to overcome the rejection.

Applicant further argues that Quinnell does not disclose the retaining device of the present invention because the retaining device of the present invention is meant to attach the gun rest to the shaft, whereas Quinnell attaches the gun rest to a gun. However, it has been held that the recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. In this case, Quinnell teaches the claimed retaining devices for securing members of a gun rest assembly together, and it is not necessary for Quinnell to teach the exact same intended use for the retaining device as that recited in the presently claimed invention.

Claim Objections

2. Claim 23 is objected to because of the following informalities: In claim 23, line 9, “such that the an elongated shaft” should be --such that an elongated shaft--. Appropriate correction is required.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 31, 32, 33, 38 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by U.S. Patent No. 3,584,821 to Glebe (cited in Office Action of 4/3/2002).

In reference to claim 31, Glebe discloses a gun rest including: a plate having a first plate section in a first plane (figure 2, where element 14 is held to be a plate with a depression), a second plate section in a second plane (element 16), and an intermediate section between the first and second plate sections (section between elements 14 and 16); and an opening in the first plate section, the opening adapted and configured for an elongated shaft having a longitudinal axis to be inserted therethrough (column 2, lines 52-53); wherein the first plane is non-perpendicular to the shaft (figure 3); an interior angle is formed between the first and second plate sections (figure 2); the intermediate plate section is adapted to receive the forearm of a firearm so that the firearm may rest atop the intermediate plate section and upon the first and second plate sections (column 2, lines 7-9); and the opening allows selective adjustment of the plate's position along the length of the shaft (column 2, lines 63-64).

In reference to claim 32, Glebe discloses first and second plate sections meeting at an intermediate plate section (figure 2).

In reference to claim 33, Glebe discloses an opening in the first plane (figure 4, where opening for shaft 10 lies in plane of element 14).

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In reference to claim 38, Glebe discloses at least a portion of the opening covered by a flexible gripping aid (column 3, lines 2-6: rubber tips protruding into the opening to grip the shaft).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1, 6, and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Glebe.

In reference to claim 1, Glebe discloses a gun rest including: a plate with a first end section in a first plane (figure 2, element 14), a second end section (element 16) and an intermediate section, wherein the plate is bent at the intermediate section such that an interior angle is formed between the first end section of the plate and the second end section of the plate (figure 2: angle between elements 14 and 16); and an opening formed in the first end section of the plate through which an elongated shaft having a longitudinal axis may be inserted (column 2, lines 52-53); wherein the opening is configured and arranged to allow selective adjustment of the plate's position along the length of the shaft (column 2, lines 63-64); and the first end section is disposed in relation to the shaft such that the plane of the first end section is non-perpendicular to the longitudinal axis of the shaft (figure 3). Glebe does not specifically disclose an interior angle from 90 degrees to 150 degrees. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to select this interior angle range, since it has

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been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art.

In reference to claim 6, Glebe discloses a retaining device for securing the gun rest to the shaft (column 2, lines 43-75).

In reference to claim 35, Glebe does not specifically disclose teeth formed into the periphery of the opening. Glebe does, however, state that a variety of frictional or clamping devices can be used to hold the rest on the shaft (column 2, lines 43-48), giving the example of screws which "bite" into the walls of the shaft (column 2, lines 55-58) to grip the shaft. The screws therefore act as teeth biting the shaft. It would have been obvious to one having ordinary skill in the art at the time the invention was made to include teeth formed into the periphery of the opening instead of teeth on screws around the opening, since it has been held that rearranging parts of an invention involves only routine skill in the art.

7. Claims 2-4, 36, and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Glebe in view of U.S. Patent No. 5,829,731 to Dean (cited in Office Action of 4/3/2002).

In reference to claim 2, Glebe does not disclose a tear-drop shaped opening.

Dean teaches a support (figures 1, 2) including a tear-dropped shape opening (element 43) with the point of the tear-drop aligned towards a first end section of the support (element 40) and the round end of the tear-drop aligned towards a second end section of the support (element 30). Dean teaches that the tear-dropped shape permits the support to be used with shafts having a wider range of diameters than would be possible with a circular opening (column 4, lines 7-14). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to include a tear-drop shaped opening, as taught by Dean, in the gun rest

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disclosed by Glebe, to permit the rest to be used with shafts having a wide range of diameters.

Dean is considered to be analogous art because it concerns a support element which fits onto a shaft; this is clearly relevant to a gun support designed to fit onto a shaft.

In reference to claim 3, Glebe does not specifically disclose teeth formed into the periphery of the opening. Glebe does, however, state that a variety of frictional or clamping devices can be used to hold the rest on the shaft (column 2, lines 43-48), giving the example of screws which "bite" into the walls of the shaft (column 2, lines 55-58) to grip the shaft. The screws therefore act as teeth biting the shaft. It would have been obvious to one having ordinary skill in the art at the time the invention was made to include teeth formed into the periphery of the opening instead of teeth on screws around the opening, since it has been held that rearranging parts of an invention involves only routine skill in the art.

In reference to claim 4, Glebe discloses at least a portion of the opening covered by a flexible gripping aid (column 3, lines 2-6: rubber tips protruding into the opening to grip the shaft).

In reference to claim 36, Dean teaches a tapering opening. See discussion of claims 2 and 13 above.

In reference to claim 37, Dean teaches an opening that tapers toward a point facing away from an intermediate section of a support and that has a rounded end aligned toward the intermediate section of the support. See discussion of claims 2 and 13 above.

8. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Glebe in view of Dean as applied to claim 4 above, and further in view of U.S. Patent No. 4,760,624 to Fish.

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In reference to claim 5, Glebe, as modified, does not disclose a flexible gripping aid with a slit.

Fish teaches a flexible gripping aid with a slit (figure 1, slit 14). Fish teaches that the slit provides the object being held with access to the opening (column 2, lines 57-66), and that the flexible gripping aid provides superior closing and gripping capabilities (column 2, lines 30-32). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to include a flexible gripping aid with a slit, as taught by Fish, surrounding the opening of the gun rest disclosed by Glebe, as modified, so as to provide access for a shaft through the slit, and to close around the shaft and grip it.

9. Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Glebe in view of U.S. Patent No. 5,811,720 to Quinnell et al. (cited in Office Action of 4/3/2002).

In reference to claim 7, Glebe does not disclose a loop formed onto the second end section.

Quinnell et al. teaches a retaining device in the form of a loop (figure 6, element 148) formed onto a section of a gun rest assembly. The reference teaches that a recoil energy-transferring strap can be secured to this loop (column 8, lines 16-22). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to include a retaining device in the form of a loop, as taught by Quinnell et al., formed onto the second end section of the gun rest disclosed by Glebe, to provide a point of attachment for a strap which transfers recoil energy and which secures members of the gun rest assembly together.

In reference to claim 8, Glebe does not disclose an opening formed into the second end section of the gun rest.

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Quinnell et al. discloses a gun rest retaining device in the form of a loop formed *onto* a section of a gun rest (see discussion of claim 7 above) rather than in the form of an opening formed *into* a section of the rest. Nevertheless, the geometry of the loop does comprise an opening. It would have been obvious to form this opening, i.e. this retaining device, within a section of the rest rather than onto an end section of the rest, since rearranging elements of an invention involves only routine skill in the art.

10. Claims 9-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Glebe in view of U.S. Patent No. 6,276,087 to Singletary (cited in Office Action of 4/3/2002).

In reference to claim 9, Glebe discloses the claimed invention except for a mounting bracket such that the shaft may be fixed to a surface.

Singletary teaches a gun rest (figure 1, element 10) including a mounting bracket (element 14a) such that a shaft (element 18) may be fixed to a surface (column 4, lines 27-29). The Singletary reference teaches that this allows the invention to be suited for different environments and usage by enabling it to be removably secured to any particular elevated stationary surface such as a hunting stand, chair, or the like (column 2, lines 17-22). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to include a mounting bracket, as taught by Singletary, for the gun rest disclosed by Glebe, to allow a shaft to be removably secured to any elevated stationary surface.

In reference to claim 10, Glebe does not disclose a mounting bracket comprising pressure plates and a receptacle.

Singletary teaches a mounting bracket (figure 1, element 14a) including a first pressure plate (figure 2, element 28), connectively attached to a second pressure plate (element 32) with a

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tightener (element 40); and a receptacle (element 22) permanently attached to the first pressure plate, which forms a generally cylindrical cavity (column 6, lines 63-67). Rather than teaching a cavity perpendicular to the first pressure plate, Singletary shows a cavity which is positioned at a slight angle from the plane perpendicular to the first pressure plate (figure 2). Nevertheless, Singletary teaches that this angled position is a “displaced” position (column 5, lines 12-16), thereby suggesting that the non-displaced position of the cavity would be perpendicular to the first pressure plate. Moreover, Singletary teaches that the user may wish to rotate the device to any desired location (column 7, lines 1-3). It would therefore be obvious to position the cavity taught by Singletary such that it is perpendicular to the pressure plate, since positioning of the device at a perpendicular angle may be desirable to the user. As discussed above in reference to claim 9, the Singletary reference teaches that the mounting bracket allows the invention to be suited for different environments and usage by enabling it to be removably secured to any particular elevated stationary surface such as a hunting stand, chair, or the like (column 2, lines 17-22). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to include a mounting bracket with pressure plates and a receptacle perpendicular to the plates, as taught by Singletary, for the gun rest disclosed by Glebe, to allow a shaft to be removably secured to any elevated stationary surface.

In reference to claim 11, Singletary does not specifically teach a nut and bolt tightener. Nevertheless, the tightener (figure 2, element 36) includes a threaded rod (column 4, lines 53-54) secured to a plate by another member (figure 2, where an unlabeled element is positioned between plate 38 and the rod of assembly 36). Although not specifically labeled as a nut and bolt assembly, it is understood that the threaded rod could be called a bolt (defined as a “rod for

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fastening objects together that usually has a head at one end and a screw thread at the other and is secured by a nut”). Additionally, it would have been obvious to select a nut and bolt assembly as the tightener, since applicant has not disclosed that the specific tightener used solves any stated problem or is for any particular purpose, and it appears that the invention would perform equally well using any tightener such as the well-known nut and bolt assembly.

11. Claims 23, 28, and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Glebe in view of U.S. Patent No. 3,391,889 to Stewart, Jr.

In reference to claims 23 and 34, Glebe discloses the claimed invention (see discussion of claim 1 above) except for the opening extending to one side of the plate.

Stewart, Jr. teaches a support bracket in which an opening extends to one side of the bracket (figure 1, element 15). Stewart, Jr. teaches that this allows the bracket to be easily installed onto and removed from a shaft (column 2, lines 43-45, 55-57). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to include an opening extending to one side of a plate, as taught by Stewart, Jr., in the gun rest disclosed by Glebe, so as to provide ease of installation and removal.

In reference to claim 28, Glebe discloses the claimed retaining device. See discussion of claim 6 above.

12. Claims 24-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Glebe in view of Stewart, Jr. as applied to claim 23 above, and further in view of Dean.

In reference to claim 24, Dean teaches the claimed tear-drop shape. See discussion of claim 2 above.

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In reference to claims 25 and 26, Glebe discloses the claimed teeth and flexible gripping aid. See discussion of claims 3 and 4, respectively.

13. Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Glebe in view of Stewart, Jr. and Dean as applied to claim 26 above, and further in view of Fish.

In reference to claim 27, Fish teaches the claimed flexible gripping aid with a slit. See discussion of claim 5 above.

14. Claims 29 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Glebe in view of Stewart, Jr. as applied to claim 28 above, and further in view of Quinnell et al.

In reference to claims 29 and 30, Quinnell teaches the claimed retaining devices. See discussion of claims 7 and 8 above.

Allowable Subject Matter

15. Claims 12-22 are allowed.

16. The following is a statement of reasons for the indication of allowable subject matter: Claims 12-22 recite a method for improving the accuracy of a sportsman, including the step of providing a gun rest as described in claims 1-11 and 23-38 of the present application. Although Glebe describes this gun rest and shows how this gun rest can be positioned non-perpendicularly to an elongated shaft, Glebe does not disclose the method step of placing the forearm of a firearm on the gun rest when the gun rest is positioned such that the first plane of the first end section of the gun rest is disposed at a non-perpendicular angle to the longitudinal axis of the shaft. In the method disclosed by Glebe, the firearm is placed on the gun rest when the first plane of the gun rest is perpendicular to the shaft.

Conclusion

17. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

18. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tara M. Golba whose telephone number is (703) 305-0266. The examiner can normally be reached on Monday-Thursday from 8:00 A.M. to 5:00 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Jordan can be reached at (703) 306-4159. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-7687.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

tmg
May 30, 2003



**Attachment for PTO-948 (Rev. 03/01, or earlier)
6/18/01**

The below text replaces the pre-printed text under the heading, "Information on How to Effect Drawing Changes," on the back of the PTO-948 (Rev. 03/01, or earlier) form.

INFORMATION ON HOW TO EFFECT DRAWING CHANGES

1. Correction of Informalities -- 37 CFR 1.85

New corrected drawings must be filed with the changes incorporated therein. Identifying indicia, if provided, should include the title of the invention, inventor's name, and application number, or docket number (if any) if an application number has not been assigned to the application. If this information is provided, it must be placed on the front of each sheet and centered within the top margin. If corrected drawings are required in a Notice of Allowability (PTOL-37), the new drawings **MUST** be filed within the **THREE MONTH** shortened statutory period set for reply in the Notice of Allowability. Extensions of time may **NOT** be obtained under the provisions of 37 CFR 1.136(a) or (b) for filing the corrected drawings after the mailing of a Notice of Allowability. The drawings should be filed as a separate paper with a transmittal letter addressed to the Official Draftsperson.

2. Corrections other than Informalities Noted by Draftsperson on form PTO-948.

All changes to the drawings, other than informalities noted by the Draftsperson, **MUST** be made in the same manner as above except that, normally, a highlighted (preferably red ink) sketch of the changes to be incorporated into the new drawings **MUST** be approved by the examiner before the application will be allowed. No changes will be permitted to be made, other than correction of informalities, unless the examiner has approved the proposed changes.

Timing of Corrections

Applicant is required to submit the drawing corrections within the time period set in the attached Office communication. See 37 CFR 1.85(a).

Failure to take corrective action within the set period will result in **ABANDONMENT** of the application.

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